CF0000058091

CRA - 833 94 (2)

/- APPEAL OF PRISONER -/

No. 16 Name सोडी पोज्जे

Father's Name जोगा Residence ग्राम - मोडेरास पेटलपारा
थाना - दादीरास - बस्तर

Age 32 Sentenced to आजीवन कारावास on

27.4.94 under Section 302 I.P.C. by तृतीय अति. सत्र न्यायाधीश जगदलपुर

S.T.No. 344/93

It is explained to the prisoner that if he states or Wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may be heard at all if the prisoner states that the does not wish to be represented by legal practioner the Court may proceed at once with the case and will not be obliged to give a hearing to any legal proctitioner who shoud appear.

1. Date of application for copy of Judgement: No.
2. Date of which copy received:- 27.4.94
3. Date on which Appelisent:- 5.5.94
4. Whether the prisoner wished to be represented or not Yes/~~No.~~

No. 16 Name सोडी पोज्जे w/o जोगा

Continued in 2/6/93 to 26/4/94 Jail जगदलपुर कलक्टर मप्र

No. 33 / अटेच्ड / 94 Dated 5/5/94

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur. togather with a copy of judgement or order passed in the case for favour of transmission to the proper Appliate Court.

Superintendent-Central/Distt./
जिला-कारागार श्रेणी
जगदलपुर

Date of receipt in C.J.M's Office. 7/5/94

Date of receipt of record of accompany.

Memo of Appeal of the Appelliate Court.

No. 13/94 Dated 9/5/94

Forwarded to the Session Judge Jagdalpur.

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आदेश पत्रक

मामला क्रमांक Cr. APP 833/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C.BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

07.02.2006

Miss Sharmila Singhai, Advocate for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia & Mr. Akhil Mishra, Panel Lawyers for the State.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J

By this appeal under Section 374(2) of the Cr.P.C. appellant Sodi Pojje has questioned the legality & correctness of judgment dated 27.4.1994 passed by learned 3rd Additional Sessions Judge, Bastar at Jagdalpur in S.T.No.344/93 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C for committing murder of her husband namely Sodi Joga sentenced her to undergo imprisonment for life.

The prosecution case, in brief, is that in the fateful night i.e. on 1.2.1993 at about 8.00, p.m. the accused/appellant after cooking meals was warming herself by sitting near fire, deceased Sodi Joga came and asked for something on which quarrel took place between the two and in that process the accused/appellant after catching hold the deceased by hair fell him down and pressed the neck of deceased with the leg.

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Accused/appellant also pressed the scrotal of the deceased. When the son of deceased & accused namely Sodi Hadma (PW-1) asked the accused not to indulge in such activities, she threatened him also with dire consequences. Sodi Hadma left the place on account of fear and he called his uncle namely Sodi Deva. When his uncle reached the house, at that time, accused/appellant was not at her residence and Sodi Joga was lying dead. Sodi Deva apprised about the incident to other villagers and thereafter a Panchayat was convened in which accused/appellant made extra-judicial confession regarding commission of crime in question. Matter was reported by Sodi Deva (PW-2) in the Police Station Gadiras, District Bastar on 2.2.1993 at about 9.00 p.m. on which a report (Ex.P-2) was reduced into writing and Crime No.2/93 for commission of offence under Section 302 of the I.P.C was registered. Report (Ex.P-3) was reduced into writing regarding unnatural death of deceased Sodi Joga. Panchnama (Ex.P-4) of body was prepared and site plan (Ex.P-5) was also prepared. Clothes of deceased were taken into possession under Ex.P-6 and body of deceased Joga was sent for postmortem examination to Mini Primary Health Centre, Gadiras, where Dr. Akhileshwar (PW-6) conducted the postmortem and prepared the postmortem report (Ex.P-10). Doctor noticed that there was one abrasion on the neck in the size of 5cm x 3cm, a contusion on the penis in the size of 3cm x 1½cm, another contusion was in the size of 1½ cm x 1cm, one abrasion on the scrotal in the size of 2cm x 1½ cm, bone of the neck was found fractured, clotted blood was present in the trachea and the doctor was of

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -C3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the opinion that deceased Sodi Joga died on account of asphyxia due to mugging.

After completion of investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Sukma, who in turn committed the case to learned Sessions Judge, Jagdalpur from where learned 3rd Additional Sessions Judge, Jagdalpur received the case on transfer for trial.

The prosecution in order to establish the offence against the accused/appellants examined eight witnesses. On the other hand, learned Additional Sessions Judge recorded the statement of accused/appellant under Section 313 of the Cr.P.C. in which he either pleaded innocence or denied the prosecution evidence and stated that deceased Sodi Joga committed suicide by hanging himself.

Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused person convicted & sentenced the accused in the manner as mentioned in Para 1 of this judgment.

We have heard Miss Sharmila Singhai, Advocate for accused/appellant and Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia & Mr. Akhil Mishra, Panel Lawyers for the State/ respondent.

Homicidal death of Sodi Joga is not in dispute.

As far as involvement of the accused/appellant in crime in question is concerned, PW-1 Sodi Hadma, who is none else than the son of accused &

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

deceased, has stated that on the fateful night he was sleeping in another room, on hearing noise of quarrel he woke up and saw that his father & mother were quarreling. He has further stated that when his father asked for the food to his mother, she replied that since there is no food, from where she can provide food to him and when she was about to assault his father he left for the house of his uncle Sodi Deva and informed him about the incident. His uncle went to inform his maternal uncle Madkami Ganga and when they came on the scene, they saw that his father Sodi Joga was lying dead. In the cross-examination of this witness, defence has not been able to elicit anything, which makes the evidence of this witness unreliable or untrustworthy. The presence of PW-1 being the son of deceased at the residence on the given time was natural and his evidence is also natural, there is nothing in the cross-examination that on account of any animosity against his mother he has implicated her in a false case. Moreover, the evidence of this witness stands corroborated by the evidence of PW-2 Sodi Deva, who has stated that Sodi Hadma came to him and informed him about the incident on which he went to the Sarpanch & Patel of the village and informed them about the incident. When they reached the house of Sodi Joga they saw that Sodi Joga was lying dead, there was swelling on the neck and injury on the scrotal region and on the next day, panchayat was convened. PW-3 Madkami Ganga has stated that on the fateful night Deva came to his house and informed him about the quarrel between the deceased & accused, they went to the house of deceased Sodi Joga and saw

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that he was lying dead. PW-7 Sodi Bheema has stated that Sodi Hadma informed him about the murder of his father by his mother. Panchayat was convened in which accused/appellant was called and she confessed in the Panchayat that she has committed murder of her husband.

Therefore, in view of the above evidence of PW-1, son of deceased, PW-2 brother of deceased and extra judicial confession made by accused/appellant before PW-7, the involvement of accused/appellant in the crime in question is established and the finding of the trial court to that extent is based on the legal evidence.

Learned counsel for the accused/appellant argued that the accused/appellant assaulted the deceased in a heat of passion in a sudden quarrel and without any intention to cause death of her husband, therefore, the offence against the accused/appellant does not travel beyond Section 304 Part-II of the IPC.

On the other hand, learned Additional Public Prosecutor for the State supported the impugned judgment of the trial Court.

In the evidence of PW-1 Sodi Hadma, it has come on record that deceased asked the accused for food, on which accused replied that since there is no food, therefore, from where she should provide food to him and on that moment some quarrel started between the deceased & accused and in that process all of a sudden the accused fell down the deceased by catching his scrotal and thereafter pressed his neck by the leg. From the above evidence, it cannot be said that accused/appellant attacked the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

deceased with the intention to cause his death because the incident happened on the spur of moment on sudden quarrel between the deceased and accused and in that process the accused pressed the neck of deceased with the leg which proved fatal and deceased died. Therefore, from the above evidence the knowledge can be inferred that the accused/appellant was having knowledge that by pressing the neck, she may likely to cause death but the intention to kill is not established. As such, the offence against the accused/appellant does not travel beyond Section 304 Part-II of the IPC.

In the result, the appeal is partly allowed. Conviction and sentence passed under Section 302 of the I.P.C. are set aside and accused Sodhi Pojje is acquitted of the charge under Section 302 of the IPC, instead thereof appellant Sodhi Pojje is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 10 years.

Accused Sodhi Pojje is in custody since 2.2.1993 thereby she has completed more than 13 years in custody, which has not been disputed by learned Additional Public Prosecutor for the State, as such, the accused/ appellant has already served out the sentence, therefore, she be set at liberty forthwith, if not required in any other case.

Certified copy as per rules.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan

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